



State of South Carolina
The Circuit Court of the Eleventh Judicial Circuit

R. Knox McMahon
Judge

Lexington County Judicial Center
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January 2, 2014

The Honorable Julie J. Armstrong
Clerk of Court
100 Broad Street, Suite #106
Charleston, SC 29401

IN RE: The State of South Carolina vs. Kenneth Oredell Murray
Indictment No.: 2012-GS-10-2229

Dear Clerk Armstrong:

Enclosed you will find the original Order Denying Defendant's Motion to Reconsider in the above-captioned case heard by Judge Knox McMahon. Please have one of your staff file the original order and forward a clocked copy of the order to Assistant Solicitor Alex Ziegler and Ms. Alicia V. Penn in the Public Defender's Office.

By copy of this letter, I am forwarding each attorney a copy of the original order.

Sincerely yours,

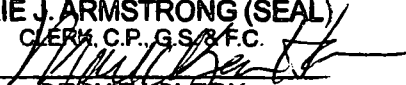
A handwritten signature in cursive script that reads "Patsy C. Havird".

Patsy C. Havird, Office of Judge Knox McMahon

pch

Enclosure: Order

cc: Alex Ziegler, Solicitor's Office
Alicia V. Penn, Public Defender's Office

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JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By 
DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON 2013 DEC 16 AM 9:36)
 STATE OF SOUTH CAROLINA) INDICTMENT #(s): 2012-GS-10-02229
) JULIE J. ARMSTRONG
) CLERK OF COURT
 BY MAH) WARRANT #(s): 1112192
 -versus-)
)
)
)
 KENNETH OREDELL MURRAY,) STATE'S RESPONSE IN OPPOSITION
) TO MOTION TO RECONSIDER
)
 Defendant.)
 _____)

PLEASE TAKE NOTICE that the State of South Carolina opposes the Defendant's Motion to Reconsider for the following reasons, to wit:

Procedural Background

On November 1, 2013, Defendant was found guilty of armed robbery after a jury trial in this Court. Defendant was sentenced to twenty-eight (28) years in the South Carolina Department of Corrections. Defendant filed a Motion for Reconsideration of the sentence on November 8, 2013.

Argument

I. The Court ruled within its wide discretion in sentencing.

The authority to change a sentence rests solely and exclusively with the sentencing judge within the exercise of his discretion. *State v. Smith*, 276 S.C. 494 (1981). A judge is to be accorded very wide discretion in determining an appropriate sentence and must be permitted to consider any and all information that reasonably might


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bear on the proper sentence for the particular defendant, given the crime committed.

Wasman v. United States, 468 U.S. 559 (1984).

Prior to the sentencing of this Defendant, the Court was aware of the facts of the case and was able to consider arguments from both the State and the Defendant regarding sentencing. The State provided Defendant's criminal record and outlined its position on the Defendant's culpability. The Defendant had opportunity to present information and argument relevant to mitigation. Therefore, the Court was able to consider all information presented prior to making its sentencing decision and ruled within its discretion based on the information presented.

The length of the sentence imposed on the Defendant was also within the broad discretion of the Court. *Garrett v. State*, 320 S.C. 353 (1995), provides that "A judge is allowed broad discretion in sentencing within statutory limits." The State Legislature has established that one convicted of armed robbery for violating Code of Laws of South Carolina § 16-11-330 (1976) must be imprisoned not less than ten years or more than thirty years. In the instant case, the sentence of 28 years in the South Carolina Department of Corrections is within the range of 10-30 years established by the Legislature. The Defendant in this case pointed a BB pistol at three Pizza Hut employees who presumed the pistol was a deadly weapon and demanded they open a cash register and safe. The Court was able to consider the seriousness of the crime committed by the Defendant prior to ruling within the statutory limits and was thus within its broad discretion in sentencing.

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II. Circumstances justify a sentence different from that received by the Codefendant.

Defense Counsel argues in its Motion for Reconsideration that Defendant's sentence is too harsh in comparison to the sentence given to his Codefendant in the armed robbery of the Pizza Hut. The State disagrees with this argument for numerous reasons.

First, it should be noted that the Codefendant was sentenced under different circumstances than the Defendant. At the time the Defendant was sentenced on November 1, 2013, the Codefendant had already received a sentence under a negotiated plea. The sentencing of the Codefendant was not before the Court in the instant case.

Second, evidence was introduced at trial in the instant case that the Defendant played a more aggressive role in the armed robbery of the Pizza Hut than that of his codefendant. Defendant jumped over the counter of the store and pointed a BB pistol at and made demands of employees, while the codefendant remained on the other side of the counter and had minimal contact with employees.

Third, the Codefendant accepted responsibility for his role in the armed robbery and pled guilty to the offense.

Fourth, the Defendant has a more serious criminal record than the Codefendant in this case. As defense counsel noted in its Motion, the Defendant has been convicted of Criminal Sexual Conduct, Third Degree, Possession with Intent to Distribute Cocaine, and Malicious Injury to Personal Property, while the Codefendant has been convicted of Possession of Cocaine, Contributing to the Delinquency of a minor, and numerous magistrate offenses.

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
Fifth, the sentence imposed upon a codefendant is not the only factor a court may consider in determining a proper punishment. As defense counsel argues, "The sentence imposed upon a codefendant for the same offense and upon others for similar offenses are among a wide variety of factors which may be properly considered in determining a proper punishment." *State v. Brewington*, 267 S.C. 97 (1976). This suggests that a codefendant's sentence is only one of a number of factors that may be considered in sentencing. In the instant case, the Court properly considered a variety of factors in determining the proper punishment for the Defendant, and the sentence handed down should not be disturbed.

Conclusion

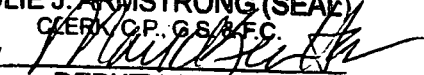
For the foregoing reasons, Defendant's Motion for Reconsideration of Sentence should be denied.

Respectfully Submitted


 Alexander J. Ziegler
 Assistant Solicitor
 Ninth Judicial Circuit

FILED
 2013 DEC 16 AM 9:37
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY 

This the 16 day of December, 2013

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 JULIE J. ARMSTRONG (SEAL)
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